

**MONTGOMERY COUNTY
COMMISSION ON COMMON OWNERSHIP COMMUNITIES
100 Maryland Avenue, Room 330
Rockville, Maryland 20850**

October 25, 2010

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Re: Case No. 11-10, Berlack v. Edson Park Condominium

ORDER OF DISMISSAL

The Complainant has notified the hearing panel that she wishes to withdraw her complaint and has asked the panel to dismiss this dispute. Respondent has filed an objection to that request, noting that Complainant's request is not accompanied by any admissions or concessions or settlement, and that it would leave all pending disputes unresolved; it further claims, not unreasonably, that it has expended time and money preparing for the hearing currently set for October 28, 2010.

The panel has considered the motion to dismiss and the opposition thereto.

A complainant's intention to withdraw its complaint does not result in the automatic dismissal of the dispute. Once the other party answers the complaint, dismissal lies within the sound discretion of the Commission or of its duly-appointed hearing panel.

In this case the hearing panel believes that the equities favor the granting of the motion to dismiss. The Complainant, who is now represented by counsel, must know that dismissal will not terminate the dispute between the parties and that if the matter is dismissed, so is the automatic stay that currently prevents the Respondent from enforcing its decision against her by, for example, taking advantage of any provision in its governing documents that allows it to enter on the property to remove the improvements she has installed. Although a dismissal will result in some inconvenience to the Respondent, it is free to file its own affirmative action against the Complainant with the Commission, and this panel's order includes protections to minimize some of

the inconvenience and delay that may result from a dismissal.

It is therefore ORDERED:

1. that this matter is DISMISSED WITHOUT PREJUDICE; and

2. that if Respondent shall file a complaint with the Commission against Ms. Berlack over the same issues raised in this matter, the parties may waive mediation without penalty because they have already participated in a mediation in this matter, and if they do so, the Commission staff shall transmit the dispute to the Commission as soon as possible after the answer is filed, and shall request the Commission to set it for a hearing on a priority basis.

Julie Dymowski, Panel Chair